G. R. S. 58]

Previous references.

File No. 139-10

Serial Nos. 1-2

1911

(Courts.)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1. 2

Part B for Jan 11

SUBJECT.

Amendment of the rule of practice in the execution of decrees

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1. From the Registrar, Ch. Court, No 2384 of 26-11-10:
Requests sanction to the cancellation of para 1, 10, ~~of~~ 11 of the rule of practice &c.

2. To the Registrar, Ch. Court. No 2152 of 28-1-11
Records sanction to the cancellation of the above rule of practice & states that rule 25 may be allowed to stand.

GPB—5,000—22-10-10

IN THE COURT OF THE JUDICIAL COMMISSIONER OF MYSORE AND COORG.

Civil Side.

Rule of Practice No. 28, *dated 8th March* 1880.

The Judicial Commissioner has made the following Rules for the guidance of the Courts in the exercise of their duties, under Section 287 of the Code of Civil Procedure :—

1. Together with the issue of the order for attachment of immovable property under Section 274, the Court shall issue a proclamation inviting all persons claiming any interest in the said property to appear in Court on a fixed day and declare their interests and produce any documents relating to the same. Such invitation shall be proclaimed at some place adjacent to the property, together with the order of attachment, by beat of drum or other customary mode, and a copy of the invitation shall be fixed up in a conspicuous part of the property, and of the Court-house, and also, when the property is land paying revenue to Government, in the Office of the Deputy Commissioner of the District.

2. The Court shall require the attendance of the attaching creditor and of the judgment-debtor on the said day, and shall call upon the latter to declare on oath or solemn affirmation his interests in the said property, who is in possession thereof, and what other interests or encumbrances may exist therein, and shall require him to produce all title-deeds and other documents in his possession relating to the property.

3. In the case of property held by Hindus, the Court shall especially enquire whether the property is self-acquired or ancestral, whether the family has been divided and what co-sharers there may be in the property, and whether there is any charge on the property on account of maintenance. The Court shall also in its discretion summon any co-sharers of the judgment-debtor and encumbrancers on the property and persons in possession thereof, and require them to produce any deeds relating thereto.

4. The party at whose instance the property may have been attached shall, before applying for an order for the sale of such property, cause search to be made in the Office of the Registrar or Sub-Registrar within whose sub-district the whole or some portion of the property is situate, with the object of ascertaining whether such property is subject to any and what encumbrances.

5. Every application for an order for the sale of immovable property in execution, shall be made on the day fixed in the notice issued under Rule 1 and shall be supported by an affidavit stating all that is known to the party at whose instance the same has been attached respecting the title to such property, and also stating the result of the search made in the Registration Office with respect thereto pursuant to the last preceding rule.

6. The Amin charged with the attachment of the property shall, at the time of attachment, make especial enquiry as to—

(*a*) the nature of the soil and of the cultivation,
(*b*) whether the land be dry, wet or garden,
(*c*) the number of wells and other means of irrigation,
(*d*) the number and kind of trees if it be garden land,
(*e*) the means of communication,
(*f*) the vicinity of markets,
(*g*) in the case of a house the material of which it is built and the extent of the compound.
(*h*) the estimated annual produce, and if leased for how long, on what terms and to whom,
(*i*) the estimated value.

And the Amin shall embody this information in the form of a written report to the Court attested by the village head-man and three of the most respectable inhabitants.

7. The Court in the case of land paying revenue to Government shall enquire from the Revenue authorities whether any arrears of revenue are due on the land, and if so their amount and for what years they are due.

8. In every case when movable property has been attached in execution of a decree. the Court shall, forthwith, cause a list of the same to be published by posting up a notice in the Court-house, and in the Chavadi or other public place of the town or village where the property has been attached, and shall annex a notice inviting all persons having claims on the said property to appear in Court on a fixed day and declare the same.

9. On the day fixed in the notices issued under Rules 1 and 8, the Court shall hold a summary enquiry into the nature of the interests, charges, claims, or encumbrances advanced against the attached property and shall decide whether or not they shall be included in the list to be attached to the proclamation of sale.

10. The proclamation of sale shall be in the following form :—

Court of
Original Suit No. of
Appeal ,, ,, in the Court of
Appeal ,, ,, in the High Court.
Plaintiff. Defendant.

In execution of a decree of Court in the above cause dated the day of in virtue whereof a sum of was adjudged to be payable by the said unto the said and of a warrant dated the day of for giving effect to the said decree by sale of property attached thereunder, notice is hereby given that on the day of at o'clock Nazir of this Court (or other person appointed) will at sell by auction to the highest bidder and without reserve the right, title and interest of the said in the several articles of property hereunder specified and every power of disposing of the same or any of them or of the profits arising therefrom which the said may now consistently with the law exercise for his own benefit.

Movable Property.

1	2	3	4	5	6	7
Lot No.	No. and description of articles.	Where attached.	Where now placed.	When to be viewed.	List of claims to which the lot is supposed to be liable after enquiry under section 287 of the Code of Civil Procedure and Rules made thereunder by High Court.	Whether any claim has been set up to lot under Section 278, Code of Civil Procedure, and with what result.

Immovable Property.

1	2	3	4	5	6	7	8	9
Lot No.	Situation of property.	Description of lot including all particulars described in Amin's report.	Survey No., Municipal No. or other fiscal designation.	Government revenue including local cess, any other known fiscal charge resting on the lot and shewing any arrears due.	Present occupant if known.	Mortgage or lien subject to which attachment has been continued and sale is to be made under Sections 282 and 295 of the Code of Civil Procedure.	List of rights, charges and claims to which the lot is supposed to be liable after inquiry under Section 287 of the Code of Civil Procedure and Rules made thereunder by the High Court.	List of claims to raise attachment rejected wholly or in part under Section 278 of the Code of Civil Procedure.
		*(a)						
		(b)						
		(c)						
		(d)						
		(e)						
		(f)						
		(g)						
		(h)						
		(i)						

NOTE.—* These letters refer to the particulars required in Rule 6.

J. D. SANDFORD,
Judicial Commissioner.

Mysore Government Press, Bangalore—19-2-80.—200.

G.R.S.11] 190-11

GENERAL AND REVENUE SECRETARIAT

(Courts)

NOTES.

Cts File No. 139-10

FILE HEADING.

Amendment of the Rule of Practice re execution of decrees

From The Registrar, Chief Court of Mysore

No. 2384/188 Dated 26-11-10. Received 28-11-10

Diary No. 1457 | Enclos. nil Spare Copies | Serial No.

BRIEF ABSTRACT OF LETTER.

Requests Sanction for the Cancellation of paras 1, 10 and 11 of the Rule of Practice, on the execution of decrees, and states that there is no authority whatever for the "Claims notices" which serve no useful purpose and only unduly swell the execution cost.

NOTES AND ORDERS.

Submitted for orders.

Hcs 122/5-12-10 (11) (1) The Chief Court are apparently of opinion that the warrant of attachment when duly executed should be sufficient notice

NOTES—First sheet.

GPB—30,000—3-4-07

Serial No.

by itself ~~of the fact of~~ attachment to intending claimants and that a separate notice inviting claimants is quite unnecessary. Though the practice of issuing such notices is one of long standing throughout the State, there may perhaps be no harm in discontinuing it. ~~Such Claimants~~

The proposal to Cancel paras 1, 10 & 11 and the words "attachment or" in rule ~~XXII~~ Cl. 4, on p. 102 of the Digest may be approved.

(2) It may however be stated that it is not Easy to see how the issue of the above notice can be considered as unauthorized by the Code. Under Sec 52 of the C. P. C. the Chief Court Can make Supplementary rules of procedure for the guidance of Courts and the above rules must be considered as having been issued in pursuance of this power.

(3) Even assuming that the Chief Court had no such power, it is too late to question ~~now~~ the authority now, as the practice has become well established in our Courts ~~and~~ while the

* Just ref.

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Serial No.

and long standing practice (supported in this instance by the order of the Ch. Ct itself) is, in matter of procedure, as good as any other law.

(4) (2) The next point for consideration is about the alleged absence of authority ("ultra-vires") for the procedure of summoning the attaching creditor and the judgment debtor to appear on a certain day with a view to ascertain what interest the judgment-debtor possesses in the attached property. It is difficult to see how the Courts can be said to have no power to summon before themselves the parties to the proceeding and put them such questions as may appear to be necessary for determining the points in dispute. The remarks made in para 1 of this note also apply to this proposal.

(5) The question of making the issue of a sale notice to the judgment-debtor necessary was raised in the D.R.A. this year and it was also discussed in the Executive Council. The point was also brought to the notice

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12
General and Revenue Secretariat.

Cs File No. 139 of 1910-11

Serial No.

Flag O

of the Legislative Council in the Speech of the 2nd Oct at the last meeting and it was distinctly stated that if the members of the Council wished to carry any amendment in the matter the Govt would not stand in the way. Nevertheless no no amendment was put forward and we may therefore take it that the non official members are not keen either about having sale notices issued to the judgment-debtor of the omitted portion of Order XXI Rule 66(2) regarding the preparation of sale proclamations restored. Para 2 of the rule in question practice may therefore remain.

12/12/10.

1042

Dewan Bros 2nd J. It would have been more serviceable if the Ch. Court had raised these matters before the meeting of the last Leg. Council. I wish to examine the

NOTE—Contn. sheet.

GPB—50,000—12-8-10

Serial No.

C. P. C. provns of the new Code again on all these points. Please bring up personally in office.

13/12/10

Sd
13/12/10.

S. 274 (S. R540 XXIV new Code) requires that the order of attachment shall be proclaimed. It is probably this that the Ch. Court had in mind when framing this rule and as S. 287 gives power to frame some such rules. I cannot see that it is ultra vires But the proclamation required by the Code itself (in S. 274) would be sufficient. The rules referred in para 1 of Ch Cts letter (1, 10 & 11) & the consequential amendment proposed in para 2 may be sanctioned The pro-

NOTE—Contn. sheet.

GPB—55,000—27-4-09

Serial No.

cess revenue will of course decrease to some extent on this account

2. The ~~para~~ rule referred to in Para 3 of the letter is quite ~~so~~ appropriate under the power given in the 2nd Para of S. 287. This provision is also reproduced in the new Code. I think it should be retained as the rule of practice, and then the omission of the words ~~object~~ in the new section (about notice to ~~pro~~ debtor &c) would have no ~~effect~~ such prejudicial effect as is feared by the Ch Co.

Dewan

5/1/11

~~4/1~~

2 books + (civil proceedings) received 6.1.11 96 24

The Chief Court may be informed accordingly

5/1/11

11/1/11

17/1

GPB—55,000—27-4-09

G. R. S. 12]
General and Revenue Secretariat.

File No. of 190

Serial No.

Subd with a draft order for appeal

Sec (22)
23.1.11

May be appd
24/1/11

1356. 2nd Cy Draft appd by Sec
24.1.11

Issue
25/1/11

25/1/11

2 To the Registrar, Chief Court
J 215 dt 28.1.11.

Sanctions ~~Approves~~ the Cancellation of Rules referred to in para (1) of Serial (1) and the Consequential amendment proposed in para (2). And directs that the Rule regarding the Summoning of the attaching Creditor and judgment-debtor referred to in para (2) of the Rule of Court may be allowed to stand

NOTE—Contn. sheet.

GPB—55,000—27-4-09

No. 2384/158

J 1457

Bangalore,
26th November 1910.

From,

The Registrar of the
Chief Court of Mysore.

To,

The Secretary to Government,
General and Revenue departments.

Sir,

I am directed to say that the Judges of the Chief Court propose with the Sanction of the Government to Cancel paras 1, 10, and 11 of the rule of Practice on the execution of decrees (Civil Digest p 54). There is no authority whatever for these "Claims Notices" which serve no useful purpose, and only unduly swell the execution Costs.

2. In Connection with this amendment

Sanction

Sanction is asked to delete the words 'attachment or' in Rule XXV cl: 4 on page 102 of the digest. The expression 'proclamation of attachment' has no meaning unless it applies to the above mentioned claims notices.

3. Para 2 of the Rule of practice in execution of decrees appears also to be ultra Vires under the present Code. The New British India Code [O 21 r 66(2) and Form No: 28 of appendix E] gives legal sanction to the rule and the Judges of this Court do not therefore propose any change until it is known whether the provision referred to will be reproduced in the Mysore Code.

I have the honor to be,
Sir,
Your most obedient servant,

Registrar.

DBC

1457/26-1-11

G.R.S. 28.]

(1st) File No. 139-12

Serial No. 2

Diary No. of letter replied to 157

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT
(C.)

, the 19

Date of issue 28th January 1911

Signed by Mr. S. Srinivasamaiya

READ—

Letter N° 2384/158 dated the 26th November 1910, from the Registrar, Chief Court of Mysore, requesting that sanction may be accorded to the Cancellation of

ORDER THEREON.—No.

paras 1, ~~2~~ 10 and 11 of the Rules of Practice N° 28 dated the 8th March 1880 and N° 32 dated 22nd September 1880, regarding the execution of decrees and to the amendment

over

SUBJECT.

(Rule 25 of
the Central Nazarath
Rules.

Order thereon No. - J2152/dt 139-10-2 of 28/11/1911.

Govt are pleased to
sanction the cancellation
of the rules referred to
in para (1) of the letter
read above, ~~as~~ and
~~also~~ the
Consequential Amendment
proposed in para (2)
thereof. But Govt observe
that the rule regarding
the summoning of the
attaching Creditor and
Judgment-debtor ~~and~~ with a view to
ascertain certain matters,
referred to in para 3 of ~~the letter~~
~~the said Rules of Practice,~~
appears to be
~~is quite~~ appropriate under
the power given in the penultimate
~~last~~ para of section
287 of the Code of Civil
Procedure, ~~which~~ ~~is wrongly~~

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation Sheet draft form.*)

It may therefore be allowed to stand

24/1/11

For Secy to Govt

To

The Registrar, Civil Court.

23.1.11.

27/1/11